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IN THE

Supreme Court of the United States

No. 666

J. TURNER BUTLER & WILLIAM A. HALLOWES,
As Trustees of the FLORIDA EAST COAST RAILWAY COMPANY, a Florida Corporation,
Petitioners,

vs.

WILLIAM ALEXANDER WATTS,
Respondent.

RESPONDENT'S BRIEF IN OPPOSITION

WILLIAM S. FRATES,
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Attorney for Respondent.

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OPINION BELOW

The opinion of the Florida District Court of Appeal, Third District, is reported at 103 So. 2d 123. The order of the Florida Supreme Court denying certiorari is reported at 106 So. 2d 200.

JURISDICTION

Jurisdiction of this Court is invoked under 28 U. S. C. Section 1257(3).

QUESTIONS PRESENTED

Petitioner presents two questions:

1. Whether the Florida rule of appellate procedure,

requiring litigants to call clearly and distinctly to the trial judge's attention, mistakes made in reading jury instructions, constitutes an unreasonable obstacle to the assertion of a railroad's rights under the Federal Employers' Liability Act, 45 U. S. C. Section 51 et. seq.

2. Whether the court below erred in holding that the charges as a whole fairly submitted the issues regarding voidability of a release under the Federal Employers' Liability Act, 45 U. S. C. Section 51 et. seq.

STATUTES INVOLVED

The relevant sections of the Federal Employers' Liability Act are set out in Appendix A of the Petition.

STATEMENT

Respondent recovered an $80,000 verdict and final judgment against Petitioners in an action under the Federal Employers' Liability Act. On this Petition, the only matters of significance are the jury charges on comparative negligence and voidability of the release.

The incident regarding the comparative negligence charge is set out in full in the District Court of Appeal's decision at 103 So. 2d 124-127. The trial judge charged that "the doctrine of comparative negligence applies", but inadvertently failed to read the last sentence of Petitioners' requested instruction regarding reduction of damages in proportion to Respondent's fault. The only thing counsel for Petitioners did to call this mistake to the trial court's attention was to state:

"Your Honor, what I did yesterday was to amend this Charge 20 in part. I wanted to make clear in amending this Charge 20, I meant to leave in the last sentence." (R. 829-830)

The trial judge was not informed that he had omitted a portion of a charge that he had ruled he would give. He was not even told that the comparative negligence charge was the one involved; and, finally, the trial judge was not told that he had failed to define the "doctrine of comparative negligence."

Florida appellate practice, like that of nearly all jurisdictions, precludes a re-trial where the defect complained of on appeal could have been cured by fairly calling the matter to the trial judge's attention. Consequently, when faced with the present record, the court below held:

"We are forced to conclude that no proper objection was made, and that the court was not duly informed or furnished with a request or opportunity to complete the charge, either while the jury was still present or by recalling them for that purpose." 103 So. 2d, at 126.

In the charges concerning the release issue, Petitioners do not even mention what was actually held below. The holding below was as follows:

"Under its point number one appellant assails a charge given by the court on the issues relating to the validity of the release. The charge on the subject of the release covered four pages of the typewritten record. The part quoted and cha-

lenged by the appellant was less than half of the full charge on the subject. In determining the correctness of the charge we looked not only at the portion which the appellant isolated, but examined and considered the entire charge given by the court. See Police & Firemen's Ins. Ass'n v. Hines, 134 Fla. 298, 183 So. 831, 833; Wharton v. Day, 151 Fla. 772, 10 So. 2d 417, 418; Adams v. Royal Exchange Assur., Fla. 1953, 62 So. 2d 591, 595. On reading the complete charge on the subject it is found that the issues relating to the release were presented to the jury on proper and adequate charges by the court." 103 So. 2d at 124.

The "four pages" of instructions on releases include the following charges which were given at Petitioners' request:

"You are instructed that the release introduced in evidence in this case is on the face of it broad enough to cover all claims W. A. Watts may have arising out of the injuries he received in December, 1953. If you find that W. A. Watts when he signed the release understood what he was doing and knew that he was releasing the defendant Trustee from all claims, then he is bound by it and cannot recover in this case.

I charge you that there is a difference in the law from what is called unilateral mistake and what is called mutual mistake. Unilateral mistake is a mistake by one of the two parties to an agreement as to the nature or contents of the agreement. Mutual mistake is such a mistake or

misunderstanding by both parties. A unilateral mistake is not a defense to an agreement or release.

One of the issues raised in this case is that of Mr. Watts' mental condition and competency at the time he entered into settlement negotiations with Mr. Paffe in July, 1954. On this issue, I charge you that there is in all cases a presumption of sanity.

The Plaintiff in this case, W. A. Watts, has asserted the claim that the release he signed is invalid. I charge you that the burden is upon the plaintiff to prove by a preponderance of the evidence that the release in this case was obtained by fraud or mutual mistake of fact." (R. 818-819)

REASONS FOR DENYING THE WRIT

Respondent respectfully submits that this Petition should be denied for the following reasons:

1. The decision below is of no importance whatsoever beyond the facts of the particular case.

2. The decision below is not in conflict with the decisions of any other court.

3. The Florida rule requiring litigants to state clearly and distinctly their objections and requests as to jury instructions preserves rather than obstructs federal rights by making is impossible to "sneak error into the record."

4. The charges on the release issue state the law in accordance with this Court's decisions on the point. E.g. DICE v. AKRON, CANTON & YOUNGSTOWN R. CO. 342 U.S. 359.

CONCLUSION

It is respectfully submitted that the Petition should be denied.

WILLIAM S. FRATES
448 Pan American Bank Building
Miami, Florida
Attorney for Respondent.

CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing Respondent's Brief in Opposition has this _____ day of _____ 1959, been delivered to George F. Gilleland, 657 Ingraham Building, Miami, Florida, Attorney for Petitioners.

WILLIAM S. FRATES